WILLIAM R. SMITH

IBLA 93-593 Decided June 14, 1994

Appeal from a decision of the Oregon State Office, Bureau of Land Management, refusing to refund a service charge for rejected mineral patent application OR-49606.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Rules and Regulations--Federal Land Policy and Management Act of 1976: Service Charges

   A $450 service charge paid for filing a mineral patent application pursuant to Departmental regulation 43 CFR 3862.1-2 could not be refunded after the claims for which patent was sought were declared abandoned and void under section 314 of the Federal Land Policy and Management Act of 1976.

APPEARANCES: William R. Smith, Days Creek, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

William R. Smith has appealed from a provision of a June 30, 1993, decision by the Oregon State Office, Bureau of Land Management (BLM) finding that a $450 service charge paid when he filed a mineral patent application for five placer mining claims could not be refunded. The patent application was rejected because the claims had become abandoned and void when filings required to be made pursuant to 43 U.S.C. § 1744 (1988) were not made in 1992. Citing 43 CFR 3862.1-2, the BLM decision stated that the $450 service charge furnished with the application could not be refunded.

Smith admits that the patent application was properly rejected because the claims sought to be patented had become abandoned and void by operation of law, but argues that the service charge should not have been retained by BLM. He contends that, since the claims were void when the application was filed, it was error for BLM to accept his application because it could not, under the circumstances, lead to issuance of a patent. He claims the $450 service charge should be refunded.

The regulation that controls payment of service charges for acceptance of patent applications, 43 CFR 3862.1-2, provides that: "Each Mineral

Patent Application shall be accompanied by a nonrefundable service charge of $250 per application and [sic] the initial mining claim or site plus $50 for each additional mining claim or site contained within the application."

Because five mining claims were sought to be patented in this case, BLM calculated that a service charge of $450 was required; $250 for the initial claim, plus $50 each for each of the four additional claims, for a total of $450. Smith does not quarrel with this calculation. His contention that BLM should not be allowed to retain the service charge collected in cases where the patent is not granted is, however, directly contrary to the regulation provided for such payments.

Nor can it be successfully contended that rejection of the application was made in error, since it is conceded that the claims were void. On the record before us, BLM does not have authority to refund the $450 service charge, since to do so would be directly contrary to the regulation provided for such cases. Acceptance by BLM of the application for review did not guarantee that it would be approved, nor does Smith allege that any such representation was made by BLM employees when the application was made. In any case, BLM is bound to apply duly promulgated Departmental regulations such as 43 CFR 3862.1-2, and the regulation was binding as well on Smith, who was charged with notice of the relevant provision controlling payment of service charges in cases such as this. See generally Thomas L. Sawyer, 114 IBLA 135, 139 (1990) (persons dealing with the Government are presumed to have knowledge of applicable regulations governing their transaction).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge